

IN THE SUPREME COURT OF CALIFORNIA

JOEY WELLS, a Minor, etc., et al.,)	
)	
Plaintiffs and Appellants,)	
)	S123951
v.)	
)	Ct.App. 3 C042504
ONE2ONE LEARNING FOUNDATION)	
et al.,)	
)	Sierra County
Defendants and Respondents;)	Super. Ct. No. S46-CV-5844
)	
STATE OF CALIFORNIA,)	
)	
Real Party in Interest and Respondent.)	
_____)	

MODIFICATION OF OPINION

BY THE COURT:

The opinion herein, filed on August 31, 2006, appearing at 39 Cal.4th 1164, is modified as follows:

1. The sentence beginning on the second line of the first full paragraph on page 1179 is modified to read as follows:

(2) On the other hand, the charter schools in this case, and their operators, are “persons” subject to suit under both the CFCA and the UCL, and are not exempt from either law merely because such schools are deemed part of the public school system.

2. The penultimate sentence of the first full paragraph on page 1179 is modified to read as follows:

Finally, a qui tam action under the CFCA against a charter school or its operator is not subject to the Tort Claims Act (TCA; Gov. Code, § 815 et seq.) requirement of prior presentment of a claim for payment (see *id.*, §§ 905, 910 et seq.).

3. The second and third sentences of the paragraph beginning at the bottom of page 1200 are modified to read as follows:

Though charter schools are deemed part of the system of public schools for purposes of academics and state funding eligibility, and are subject to some oversight by public school officials (see *Wilson, supra*, 75 Cal.App.4th 1125, 1136-1142), the charter schools here are *operated*, not by the public school system, but by distinct outside entities—which the parties characterize as non-profit corporations—that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy. The sole relationship between the charter school operators and the chartering districts in this case is through the charters governing the schools’ operation.

4. The last sentence of the second full paragraph that begins on page 1201 is modified to read as follows:

The statutory purpose is equally served by applying the CFCA to the independent corporations that receive public monies under the CSA to operate the schools at issue here on behalf of the public education system.

5. The first sentence of the third full paragraph that begins on page 1201 is modified to read as follows:

On the other hand, we conclude, the sovereign power over public education is not infringed by application of the CFCA, including its treble-damages-plus-penalties provisions, to the charter school operators in this case.

6. The third and fourth sentences of the first full paragraph that begins on page 1202 is modified to read as follows:

Yet application of the CFCA’s monetary remedies, however harsh, to the charter school defendants presents no fundamental threat to maintenance, within the affected districts, of basically adequate free public educational services. Thus, application of the CFCA to the charter school operators in this case cannot be

said to infringe the exercise of the sovereign power over public education.

7. The paragraph that begins at the bottom of page 1203 and carries over to page 1204 is modified to read as follows:

As we have indicated, the charter schools here are operated, pursuant to the CSA, by corporations that, for purposes of the CFCA, do not qualify as public entities. Though, by statutory mandate, these institutions are an alternative form of public schools financed by public education funds, they and their operators are largely free and independent of management and oversight by the public education bureaucracy. Indeed, the charter schools compete with traditional public schools for students, and they receive funding based on the number of students they recruit and retain at the expense of the traditional system. Insofar as their operators use deceptive business practices to further these efforts, the purposes of the UCL are served by subjecting them to the provisions of that statute.

8. The second sentence of the first full paragraph that begins on page 1204 is modified to read as follows:

Even if governmental entities, in the exercise of their sovereign functions, are exempt from the UCL's restrictions on their competitive practices (see *Community Memorial, supra*, 50 Cal.App.4th 199, 209-211 [county was not "person" for purposes of UCL, such that county hospital's treatment of paying patients in competition with private hospitals would be subject to statute]), no reason appears to apply that principle to the charter school defendants, which are covered by the plain terms of the statute and which compete with the traditional public schools for students and funding.

9. The heading of the section that begins on page 1213 is modified to read as follows:

9. Did the CFCA cause of action against the charter school defendants require prior presentment of a claim under the TCA?

10. The last sentence of the first full paragraph on page 1214 is modified to read as follows:

However, those purposes do not expressly include coverage by the TCA and, for reasons previously discussed in connection with the CFCA, the charter school defendants do not fit comfortably within any of the categories defined, for purposes of the TCA, as “local public entities.”

11. The sixth sentence (excluding citations) of footnote 38 on page 1216 is modified to read as follows:

Insofar as “persons,” as defined in the CFCA, include the corporations that operate the charter schools in this case, they are not entitled to immunity under the TCA.

These modifications do not affect the judgment.

The first full paragraph of the concurring and dissenting opinion of Kennard, J. at the top of page 1217 is modified to read as follows:

I concur in the majority’s holdings that: (1) public school districts are not subject to lawsuits under the California False Claims Act; (2) the charter schools in this case and their operators are subject to lawsuits under the California False Claims Act and the unfair competition law; (3) plaintiffs’ claims, except for the allegation that defendant One2One Learning Foundation failed to provide the education it promised, are not barred as claims for “educational malfeasance”; and (4) plaintiffs are not required to present written claims under the Torts Claim Act before filing a qui tam action under the California False Claims Act.

This modification does not affect the judgment.